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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 NATSUE ELLIOTT, *et al.*,  
11  
12 Plaintiffs,  
13  
14 v.  
15 QC CIRCA 37, LLC, *et al.*,  
16 Defendants.

Case No. 16-cv-00288-BAS-AGS  
**ORDER GRANTING *EX PARTE***  
**MOTION TO STRIKE**  
[ECF No. 114]

17 Presently before the Court is Defendants Versa CIC, LP and ConAm  
18 Management Corporation's ("Defendants") *ex parte* motion for (1) an order either  
19 striking Plaintiffs' opposition (the "Opposition") to Defendants' motion for summary  
20 judgment or an order striking additional pages in the Opposition beyond the 25 pages  
21 permitted by the Local Rules, and (2) an order to strike Plaintiffs' untimely pleadings  
22 filed in support of the Opposition. In the alternative, Defendants seek an extension  
23 of time to file a response to the Opposition and leave of court to file a 25-page reply.

24 For the reasons below, the Court grants Defendants' request to strike the  
25 Opposition. The Court also strikes the supporting papers. Plaintiffs, however, will  
26 have the opportunity to submit a revised Opposition and their supporting papers.

27 **I. BACKGROUND**

28 Defendants filed a motion for summary judgment on Plaintiffs' claims with

1 the Court on October 9, 2017. (ECF No. 92.) Plaintiffs’ Opposition and supporting  
2 papers were due on October 30, 2017. Plaintiffs filed a 66-page Opposition on  
3 October 30, 2017, and a notice of lodgment of exhibits thereto, but these submissions  
4 lacked certificates of service. (ECF Nos. 103, 104.) Plaintiffs also submitted three  
5 declarations in support of the Opposition, with the declarations of Plaintiff Natsue  
6 Elliott and Steve Smelser lacking their signatures. (ECF Nos. 105, 105-2.) Plaintiffs  
7 subsequently requested to withdraw these declarations because they lacked  
8 signatures and indicated they would refile them. (ECF No. 109.) On October 31 and  
9 November 2, 2017, Plaintiffs filed the missing certificates of service for the  
10 Opposition and lodgment of exhibits. (ECF Nos. 107, 108.) Plaintiffs also  
11 resubmitted all supporting declarations on November 2, 2017 with signatures. (ECF  
12 Nos. 110–113.)

13 Defendants subsequently informed Plaintiffs’ counsel of their intent to file an  
14 *ex parte* motion seeking relief from the Court regarding Plaintiffs’ excessive  
15 Opposition and untimely filings. (ECF No. 114-1, Decl. of Rita R. Kanno ¶3.) The  
16 Court now considers Defendants’ *ex parte* request.

## 17 **II. DISCUSSION**

### 18 **A. Plaintiffs’ Excessive Opposition is Stricken**

19 Civil Local Rule 7.1(h) provides that “[b]riefs or memoranda in support or in  
20 opposition to all motions noticed for the same motion day *must not exceed a total of*  
21 *twenty-five (25) pages in length*, per party, for all such motions *without leave of*  
22 *[Court].*” (emphasis added). Courts generally look with disfavor on motions to  
23 exceed page limits for briefs or memoranda, and grants to exceed such limits are the  
24 exception. *See, e.g., Santos v. Baca*, No. 2:11-cv-01252-KJD-NJK, 2017 WL  
25 773874, at \*1 (D. Nev. Feb. 28, 2017). Excessive briefs are ill-advised considering  
26 the strains on judicial dockets and potential prejudice to the opposing party. *See*  
27 *Murray v. City of Bonners Ferry*, No. 2:15-cv-00081-REB, 2016 WL 3198232, at \*2  
28 n.3 (D. Idaho June 8, 2016). Moreover, excessive briefs “may actually hurt a party’s

1 case, making it ‘far more likely that meritorious arguments will be lost amid the mass  
2 of detail.’” *Elec. Frontier Found. v. C.I.A.*, No. C 09-03351 SBA, 2012 WL 112359,  
3 at \*1 (N.D. Cal. April 3, 2012) (quoting *Fleming v. Cnty. of Kane, State of Ill.*, 855  
4 F.2d 496, 497 (7th Cir. 1988)). In contrast, shorter briefs are typically more helpful  
5 to the Court “because the discipline of compression forces the parties to explain  
6 clearly and succinctly what has happened, the precise legal issue, and just why they  
7 believe the law supports them.” *Id.* (quoting *In re M.S.V., Inc.*, 892 F.2d 5, 6 (1st  
8 Cir. 1989)).

9 Here, Plaintiffs submitted a 66-page Opposition without first seeking leave  
10 from the Court. The submission thus violates the plain language of Civil Local Rule  
11 7.1(h). The overly excessive length of the submission is also prejudicial to  
12 Defendants given that the applicable Local Rule generally limits the length of a reply  
13 brief to 10 pages. Civ. L.R. 7.1(h). A court may strike a brief that violates the length  
14 requirement set by the Local Rules, or strike the offending portion exceeding the  
15 length requirement. *See, e.g., Elec. Frontier Found.*, 2012 WL 112359, at \*1; *King*  
16 *Cnty. v. Rasmussen*, 143 F. Supp. 2d 1225, 1227 (W.D. Wash. 2001). The Court will  
17 strike Plaintiffs’ Opposition in its entirety. However, the Court will afford Plaintiffs  
18 the opportunity to file a brief that conforms to the page limit set by Local Rule 7.1(h).  
19 Plaintiffs must endeavor to keep their Opposition concise and to the point. Because  
20 the Court is striking the Opposition, the supporting papers are also stricken. Plaintiffs  
21 may re-submit the supporting papers with their revised Opposition.

## 22 **B. Violations of Other Local Rules**

23 The Court further advises Plaintiffs that their now stricken Opposition failed  
24 to comply with various local rules. First, the Opposition failed to comply with the  
25 Local Rule regarding the contents of an opposition. The Opposition lacked a “brief  
26 and complete statement of all reasons in opposition to the position taken by the  
27 movant.” Civ. L.R. 7.1(f)(3)(b). The value of this rule is that it provides a distilled  
28 view to the Court of a party’s opposition. Second, the Opposition and lodgment of

1 exhibits lacked certificates of service when they were filed (ECF Nos. 103, 104), in  
2 contravention of the rule that a document filed electronically must contain a  
3 certificate of service. *See* Civ. L.R. 5.4(c). Instead, Plaintiffs filed certificates  
4 separately on the docket. (ECF Nos. 107, 108.) Third, the Opposition lacked  
5 complete copies of all documentary evidence upon which the Plaintiffs relied at the  
6 time it was filed. *See* Civ. L.R. 7.1(e)(2); 7.1(f)(3)(b). Although the Opposition  
7 referenced the declarations of Plaintiff Natsue Elliott and Steve Smelser, these  
8 declarations were not properly filed until November 2, 2017. (ECF Nos. 110, 112.)  
9 Plaintiffs are advised that a failure to file papers in the manner required by Civil  
10 Local Rule 7.1(e)(2) may constitute a consent to the granting of a motion or other  
11 request for ruling by the Court. Civ. L.R. 7.1(f)(3)(c).


### 12 **III. CONCLUSION & ORDER**

13 For the foregoing reasons, the Court **HEREBY ORDERS** that:

- 14 1. Plaintiffs' Opposition and supporting papers **ARE STRICKEN**. (ECF Nos.  
15 103, 104, 107, 108, 110, 111, 112.)
- 16 2. Plaintiffs may re-submit a revised Opposition, **not exceeding 25 pages**, and  
17 their supporting papers **no later than November 10, 2017**.
- 18 3. Defendants may file a reply to the Opposition, not exceeding 10 pages, and  
19 any supporting papers, **no later than November 17, 2017**.

20 **IT IS SO ORDERED.**

21  
22 **DATED: November 3, 2017**

  
**Hon. Cynthia Bashant**  
**United States District Judge**